

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6155

PETITION OF STEPHEN J. ROSEN
(Hearing held October 4, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, December 6, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-B-5.3 and 59-C-1.323(a). The existing single-family dwelling requires a variance of 2.80 feet as it is within 12.20 feet of the rear lot line and the petitioner proposes the construction of a one-story addition that requires a variance of three (3) feet as it within 26.20 feet of the established front building line (Turner Lane) and a one-story addition that requires a variance of 2.80 feet as it is within 12.20 feet of the rear lot line. The required rear lot line setback is fifteen (15) feet and the required established building line is 29.20 feet.

Stephen Orens, Esquire, Casey Moore, Esquire, and Michael Fox, an architect, represented Stephen and Laurie Rosen, the petitioners, at the public hearing.

The subject property is Lot 5, Block E, Chevy Chase Manor Subdivision, located at 3301 Turner Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00615656).

Decision of the Board: Requested variances for the existing single-family dwelling and a one-story addition: **granted**; variance for a one-story addition: **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. Mr. Orens stated that the subject property was platted in 1948 and that it is subject to 1941 Montgomery County Zoning Ordinance. The subject property is a corner lot located at the intersection of Turner and Pomander Lanes. Mr. Orens stated that the variances, as requested, would square-off certain sections of the house to increase the existing living space. Mr. Orens stated that the house was built in 1951 and that the lot is a triangularly-shaped teardrop, which creates a shallow and narrow buildable footprint. Mr. Orens stated that the lot's topography has a significant slope downward from the house to Turner

Lane. The lot is 9,264 square feet. See Exhibit No. 17(b) [rendered survey].

2. Mr. Fox testified that a portion of the existing house is currently located in the western rear yard setback and the petitioners propose the construction of a one-story addition in the eastern front yard (Turner Lane) and a one-story addition in western rear yard.
3. Mr. Fox testified that the subject property is teardrop-in-shape and that the surrounding properties are all rectangular in shape. Mr. Fox testified that the shape of the lot is widest at its front and then narrows to a point at the rear yard. Mr. Fox testified that the existing house is 2,142 square feet and that the lot coverage is 23.1%. With the proposed addition, the house would increase to 2,575 square feet and the lot coverage would be 27.8%. See Exhibit Nos. 11(a) [zoning vicinity map], 18 [rendered site plan of existing and proposed footprints] and 19 [rendered diagram of setbacks].
4. Mr. Fox testified that the property has a 20% slope at the front of the house downward to Turner Lane. Mr. Fox testified that the entry to the house is from Turner Lane and that this is the steepest point on the lot. Mr. Fox testified that the property's driveway is located on the southwest side of the lot, which is the area that faces Pomander Lane. Mr. Fox testified that the Pomander Lane side of the property also has a downward slope to the topography. Mr. Fox testified that the variance requested for the one-story addition closest to Turner Lane was designed to fit in with the neighborhood in material and style and that a different design would increase the costs of construction.
5. Mr. Fox testified that Lots 28 through 36 average 10,182 square feet in lot size and that the petitioner's lot is 9,264 square feet. Mr. Fox testified that the triangular shape of the subject property, with its two front yards, creates a very limited buildable envelope. Mr. Fox testified that if a variance were not granted for the existing residence that portions of the structure would have to be removed to come into compliance with the zoning ordinance.
6. The petitioner testified that he has resided in the home for ten years and that the proposed construction would be in harmony with other homes in the neighborhood. The petitioner testified that he is a C5 quadriplegic and that the proposed construction would accommodate his existing physical condition and needs.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the requested variance from the established building line (Turner Lane) for the construction of a one-story addition must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the petitioners' lot is irregularly shaped, the requested variance for a one-story addition in the western front yard is not related to the shape of the lot or the application of the zoning regulations to the subject property. The Board notes that neither the siting of a house nor consideration of design elements are factors which justify the grant of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of three (3) feet from the required 29.20 foot established front building line for the construction of a one-story addition is denied.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(b) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property is an irregularly shaped lot, which constrains the buildable envelope and that the existing house extends into the required rear yard setback. The Board finds that the dwelling has existed on the property since 1951. The Board finds that the proposed one-story addition that would be located in the rear yard would not extend beyond the footprint of the existing house.

The Board finds that there are exceptional circumstances peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the petitioners.

(c) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variances requested for the existing single-family dwelling and a one-story addition are the minimum reasonably necessary.

(d) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the existing structure and the proposed addition will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the variances requested will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

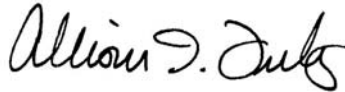
Accordingly, the requested variances of 2.80 feet from the required fifteen (15) foot required rear lot line setback for the existing single-family dwelling and a variance of 2.80 feet from the required fifteen (15) rear lot line setback for the construction of a one-story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness and the representations of their attorneys, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(h), 5(a) through 5(h), 11(a), 17(b), 18 and 19.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Wendell M. Holloway, Donna L. Barron and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 6th day of December, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.